



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 28, 2022

IN THE MATTER OF:

Appeal Board No. 624445

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 624443 and 624444, an appeal was processed from the decisions of the Administrative Law Judge, filed October 7, 2021, which overruled the initial determinations disqualifying the claimant from receiving benefits, effective November 9, 2019, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to November 9, 2019 cannot be used toward the establishment of a claim for benefits; and charging the claimant with an overpayment of \$903 in benefits recoverable pursuant to Labor Law § 597 (4).

In Appeal Board No. 624445, the claimant appeals from the decision of the Administrative Law Judge filed October 7, 2021, which sustained the initial determination reducing the claimant's right to receive future benefits by eight effective days on the basis that the claimant made a willful misrepresentation to obtain benefits as modified to impose a forfeit penalty of four effective days.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant.

With respect to Appeal Board Nos. 624443 and 624444, it now appears that the appeal was processed through inadvertence, as the record contains no actual request for an appeal from the Judge's decisions.

Now, based on all of the foregoing, it is

ORDERED, that the appeal with respect to Appeal Board No. 624443 and 624444 is dismissed; and it is further

ORDERED, that the decisions of the Administrative Law Judge that overruled the initial determinations of misconduct and recoverable overpayment continue in effect.

With respect to Appeal Board No. 624445, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for the employer until November 1, 2019, when his employment ended. He received a letter indicating that he was suspended for six months and that he could return to work in May. On January 27, 2020, the claimant filed a claim for benefits. When asked how he lost his employment, he was presented with options including lack of work, quit, fired, strike or lockout, and discharged because you were unable to meet you employer performance or production standards. He selected lack of work.

OPINION: The credible evidence establishes that claimant represented that his employment ended due to lack of work. However, suspension was not one of the choices. As he was informed that he was suspended for six months and could return in May, his selection of lack of work was not unreasonable (See Appeal Board Nos. 584539 and 563201). Accordingly, we conclude that he claimant did not make a willful misrepresentation.

DECISION: In Appeal Board No. 624445, the decision of the Administrative Law Judge is reversed.

In Appeal Board No. 624445, the initial determination, reducing the claimant's right to receive future benefits by eight effective days on the basis that the claimant made a willful misrepresentation to obtain benefits, as modified, to impose a forfeit penalty of four effective days, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER